

Testimony in Support of Senate Bills 669 and 671-674

House Health Policy Committee

September 16, 2020

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The Mackinac Center for Public Policy’s mission is to advance liberty and opportunity for all people through research and education. While much of health care policy is driven and controlled by the federal government, there are areas of state policy that can increase access to higher quality and more affordable care for all Michiganders. Reforming Michigan’s certificate of need law is one such opportunity. We, therefore, submit this written testimony in support of Senate Bills 669 and 671-674.

Certificate-of-need (CON) laws require health care providers to seek permission from a government board before offering certain medical services, acquiring specific medical devices, and opening or expanding their facilities. These policies prohibit health care providers from making changes to their existing capacity or entering new markets without first attaining approval. Health care providers must prove to the government board that their plans are a “community necessity” and must also substantiate their plans before existing competitors, who may challenge the petitioners’ efforts to enter or enlarge their presence in the health care marketplace.

CON laws were originally put in place to control the costs of health care by intentionally limiting consumer choices by restricting the supply of services and facilities. Decades of research find, however, that CON laws are associated with reduced access to care, decreased health care quality, and higher costs, which is why, thus far, 15 states have completely repealed their CON laws and more than 20 states have fewer CON regulations than Michigan.

The bills before you offer a common-sense approach to limit the anti-competitive nature of CON laws, so Michiganders have more health care choices and, subsequently, the opportunity to receive better, more affordable care.

Senate Bill 669 eliminates covered capital expenditures from the CON process. Restrictions on new construction for existing facilities and their potential competitors are anti-competitive and unfair. By forcing the use of the CON process for capital expenditures, health care facilities and providers must needlessly seek permission to spend resources improving the patient experience in their facilities.

Senate Bill 671 increases the membership of the CON Commission from 11 to 13 by including two individuals representing the general public, one of whom would have to be from a county with a population of less than 40,000. There are problems with the Commission considering that their decisions typically affect their facilities and businesses, creating an ongoing conflict of interest. The addition of two members outside the industry to represent the public is a novel idea. Additionally, considerations should be made to make certain the composition of the Commission, including its two public members, are as transparent as possible, so the public at large knows the potential motivations behind their

actions. This should include the disclosure of relevant financial interests and political donations and affiliations.

Senate Bill 672 and Senate Bill 673 would exempt increases in licensed psychiatric beds from the certificate of need process. It would also require that a psychiatric hospital or psychiatric unit maintain 50% of available beds for public patients. Recent research by the Treatment Advocacy Center, a national, nonpartisan research organization, found that the number of psychiatric beds in the United States had fallen by 17% since 2010. This number, down from 43,318 to 37,559 this year, leaves just 11.7 beds per 100,000 people, far below the count in other developed countries. The proposed exemption of certain CON requirements for psychiatric facilities seeking to increase the number of beds available will help to address the increased demand for these treatments and make them more affordable.

Senate Bill 674 removes air ambulance services from the CON process. According to a Senate Fiscal Analysis, there is evidence that the Federal Aviation Act regulates air ambulance services, and federal law bars states from implementing statutes that override it. Thus, the intent appears to bring state law in line with federal law.

As mentioned, 15 states have repealed their CON laws and more than 20 states have fewer CON regulations on the books while continuing to provide high-quality care to patients. Recent research published by the Mercatus Center, a think tank housed at George Mason University in Washington, D.C., found that the 35 states, including Michigan, that maintain a form of CON law have poorer health outcomes for patients than those states that have repealed CON. Most notably, rates for pneumonia, heart failure, and heart attacks are significantly higher in these states, as were deaths from complications after surgery. The average 30-day mortality rate for patients with pneumonia, heart failure, and heart attack who were discharged from hospitals in CON states was 2.5-5% higher than that of their counterparts elsewhere. The largest difference is in deaths following a serious post-surgery complication, with an average of six more deaths per 1,000 patient discharges in CON states.

In Michigan, many of our residents are forced to travel long distances to obtain basic services like MRIs and CT scans. The state's CON program is associated with 5.5% more MRI scans, 3.6% more CT scans, and 3.7% more PET scans occurring in a different county than where the patient resides. For especially vulnerable patients and their families, this can be a significant challenge. Michigan's CON program is also responsible for an estimated 71 fewer health providers across the state, including rural, suburban, and urban areas.

Missing components of this package, in particular, Senate Bill 670, currently in the Senate, would be especially helpful to rural areas by exempting facilities there from the CON process. Critical care services would then be freer to open, allowing vulnerable patients to remain closer to home while receiving treatment.

While Michigan should work to repeal its certificate-of-need law fully, these reforms collectively move Michigan health policy in the right direction and should be adopted so that Michigan patients have more access to higher quality, more affordable care options.